

bottleneck facilities that it controls and they need. As discussed in Exhibit A, companies that control bottleneck facilities have a strong business incentive to act in ways inconsistent with the public interest in promoting competition (a goal that is expressly and specifically incorporated in Section 706). Efforts to coerce pro-competitive behavior by imposing competitive access obligations on the bottleneck company tend to have limited success, because they require constant regulatory vigilance and thus are very expensive.

History teaches that the only effective solution to the bottleneck problem is to separate the control of bottleneck facilities from the entity participating in competitive markets. See Exhibit A. In this case, the BOCs should be required to divest themselves of their copper loop distribution facilities and the wire center buildings that control access to these facilities. They should then be required to obtain access to these bottleneck facilities on an arms-length basis, just as their competitors have to do. If they take these steps, they should have no difficulty satisfying the Section 271 criteria for interLATA relief, and in qualifying for non-dominant carrier status for their advanced telecommunications services.

Without their bottleneck facilities, the BOCs would still have considerable strengths in the data transmission business. These will include their name recognition and reputation, their technical sophistication and human resources, their customer relationships and their great financial resources and ready access to capital markets. None of these, however, are unique to the BOCs or can be used by them to exclude competitors from data transmission markets. Once separated from their bottleneck facilities, the BOCs would be free to use their particular advantages to compete against other companies (each of which has its own advantages and disadvantages) on a fair basis.

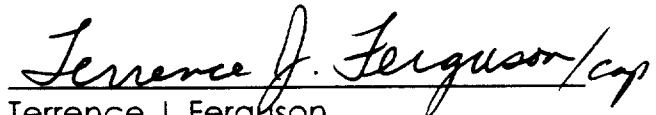
Until the BOCs divest themselves of their bottleneck facilities, however, the Commission should not grant them any relief from the requirements of Sections

251, 271, and 272 (even assuming it has that authority). Those statutory provisions were adopted specifically to limit the ability of companies controlling bottleneck facilities to abuse the market power derived from the bottleneck. Although these statutory requirements are not a complete solution to bottleneck abuses, they are better than nothing and they should not be loosened or weakened in any way until the bottleneck itself is removed from the BOCs' control.

Conclusion

For the foregoing reasons, the Petitions of Bell Atlantic, Ameritech, and US WEST should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terrence J. Ferguson/cjp". The signature is written in dark ink and is positioned above the printed name and title.

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April 6, 1998

EXHIBIT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Bell Atlantic Corporation)	CC Docket No. 98-11
for Relief from Barriers to Deployment)	
of Advanced Telecommunications Services)	
 In the Matter of)	
)	
Petition of U S WEST Communications,)	CC Docket No. 98-26
Inc. for Relief from Barriers to Deployment)	
of Advanced Telecommunications Services)	
 In the Matter of)	
)	
Petition of Ameritech Corporation to)	CC Docket No. 98-32
Remove Barriers to Investment in)	
Advanced Telecommunications Capability)	

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, INC.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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Petition of Ameritech Corporation to)	CC Docket No. 98-32
Remove Barriers to Investment in)	
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REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, INC.

Level 3 Communications, Inc. ("Level 3"), pursuant to the Commission's *Public Notice*, DA 98-513 (rel. March 16, 1998), respectfully submits the following reply comments concerning the Petitions of Bell Atlantic, Ameritech, and US WEST (collectively, the "Petitioning BOCs") for forbearance from and waivers of various statutory provisions and Commission regulations with respect to their proposed offerings of "advanced telecommunications" services.

The comments filed in this proceeding by parties other than the Petitioning BOCs, and their close allies SBC Communications, Inc. and BellSouth (collectively, the "Supporting BOCs"), weigh heavily against granting the relief requested. The comments of the handful of

the other participants that support the Petitions reflect a deep desire to see the rapid deployment of "advanced telecommunications" services regardless of the anticompetitive implications of giving the Petitioning BOCs the free rein that they seek. While none of the commenters would take the position that the deployment of broadband services should be postponed, the general view of the parties seeking a reasoned approach to such deployment is that the monopoly power of the Petitioning BOCs first must be adequately constrained in order to safeguard competition and protect the public interest. The keen interest in having broadband services available to the public must be balanced against the potential abuses of power of which the Petitioning BOCs are certainly capable. For this reason, not only should the Petitions be denied, but the Commission should expand this proceeding together with the ongoing LCI Petition proceeding to consider the creation of a regulatory regime where bottleneck control of the local loops and their serving wire centers is granted to an independent operator with whom ILECs and CLECs alike must contract to gain nondiscriminatory access to the last mile of the local exchange network.

In its initial Comments, Level 3 demonstrated that the Commission does not have the authority to grant the relief requested by the Petitioning BOCs. While many of the commenters concurred with this position, not one of the Petitioning BOCs, Supporting BOCs, or parties in support of the Petitions adequately explained how the Commission could grant the Petitions without violating explicit language of the Telecommunications Act of 1996. Moreover, even if the authority existed to grant the relief requested, the "problem" underlying the alleged need for the Petitions is greatly overstated, and the Petitioning BOCs have attempted to divert attention away from the causes of Internet network congestion for which

they are solely responsible in order to shift blame onto the telecommunications providers that represent the greatest threat to their monopoly status. It is beyond dispute that the Commission should use its authority to encourage the deployment of broadband services, but granting the Petitions (provided that the Commission's authority would even allow it to do so) will cause more harm than good and will be contrary to the public interest.

I. The Commission Lacks the Authority to Grant the Relief Requested.

In its initial Comments, Level 3 demonstrated that the Commission lacks the authority to grant the relief requested by the Petitioning BOCs. As explained before, the argument that Section 706 of the 1996 Act permits the Commission to grant the Petitions fails for at least three reasons. First, Section 706 is no more than a general statement of policy that confers no additional authority to the Commission. As a policy statement, it directs the Commission how to use the authority granted to it in other provisions of law. Second, the interpretation of Section 706 sought by the Petitioning BOCs is contrary to the accepted rule of statutory construction that specific provisions prevail over general ones. While Section 706 speaks in general terms of forbearance in order to promote a public good, Section 10(d) provides specific instructions that the Commission may not forbear from enforcement of Sections 251 and 271 of the 1996 Act. Third, the interpretation suggested by the Petitioning BOCs would provide the Commission with far more authority than the Petitioning BOCs would bargain for: because Section 706 speaks in favor of "measures that promote competition in the local telecommunications market" in addition to the forbearance relied upon by the Petitioners, if the Commission were to find that it had the authority to grant the relief requested, it could

also find that it had the authority to compel the BOCs to provide unbundled network elements and wholesale discounts at rates that would truly stimulate local competition.

The arguments in support of finding this authority in Section 706 are woefully inadequate. SBC, for example, states simply "Section 706(a) . . . gives the Commission the authority to eliminate barriers that hinder the investment needed to achieve" the deployment of advanced telecommunications. SBC Comments at 3. BellSouth avoids discussion of Commission authority entirely, devoting only a passing reference to the section of the 1996 Act (Section 706(a)) that supposedly permits the Commission to ignore the specific requirements of Sections 251 and 271. BellSouth Comments at 10. Ameritech mentions the Section in its introductory remarks, leaping to the conclusion that the fairly benign expression "shall encourage" in Section 706 is tantamount to "expressly direct[ing]" the Commission to grant any request for regulatory relief that ostensibly makes the deployment of advanced telecommunications services in any way more likely. Ameritech Comments at 1-2. Likewise, the United States Telephone Association presents the question of Commission authority to grant the relief requested as a foregone conclusion necessitated by the desire to permit deployment of advanced services by any means necessary. USTA Comments at 14-15. None of the commenters even attempts to reconcile the obvious conflict between forbearance from enforcement of Sections 251 and 271 with the unequivocal mandate of Section 10 that enforcement of these sections shall not be relaxed in any way.

While it certainly is in the public interest for the Commission to encourage the deployment of broadband telecommunications services, this encouragement must be consistent with the Commission's statutory obligations to safeguard and encourage the

development of local competition. The Commission clearly lacks the authority to grant the relief requested by the Petitioning BOCs when to do so would require forbearance from enforcement of Sections 251 and 271 that are the cornerstones of the Congressional framework to open local exchange markets to the dynamics of competition. As a legal matter, the Commission's consideration of the Petitions should end there; as a policy matter, the Commission should take the opportunity presented by the Petitions to consider steps that would truly encourage the deployment of advanced telecommunications services that would benefit consumers and providers alike, and not remove the BOCs' incentive to cooperate with competitive local exchange carriers and other telecommunications service providers to make widespread access to the local exchange network a reality.

II. The Commission Must Balance the Supposed Benefits of Giving the Petitioning BOCs Free Rein Against the Tremendous Potential for Anticompetitive Abuses.

There is no question that a primary goal of the 1996 Act is to accelerate the deployment of advanced telecommunications capabilities to all Americans. This goal, however, will not be achieved in a manner consistent with the pro-competitive mandate of the 1996 Act if the Petitions are granted. The Petitioning BOCs have seized upon a reed-thin assignment of responsibility contained in Section 706 and a fabricated sentiment that market forces are inadequate to resolve transitional impediments to a fully efficient Internet network to request freedom from statutory restrictions on the provision of telecommunications services that were implemented to ensure the development of local competition. Even if the Commission had the authority to grant the relief requested (which it does not), the harm that would result from granting the requested relief so vastly exceeds the benefits to be obtained that the Commission should summarily reject the clearly anticompetitive positions of the

Petitioning BOCs and the Supporting BOCs. As proceeding after proceeding demonstrates, the BOCs routinely seek to water down their obligations under the 1996 Act, to undermine or eradicate the authority of the Commission to promote competition, to stonewall access to bottleneck facilities essential to the provision of service by competitors, to abuse their monopoly power by unilaterally rewriting explicit contractual arrangements with competitive carriers when to do so cripples competition, and to redefine the minimum standards that they must fulfill before being permitted to provide in-region interLATA service. This proceeding represents one more battle in that long, bitter campaign to protect their monopoly interests.

The technology underlying the services that the Petitioning BOCs now want to provide freed from unbundling and resale requirements imposed by the 1996 Act has been available for some time. Competitive providers have subsequently developed the technology, and they have been prepared to deploy it as soon as they can obtain adequate access to the local exchange facilities controlled by the BOCs needed to provide the service. See, generally, Comments of Covad Communications Company. The BOCs either did not have the technology, or did not want to make the technology available for fear of cannibalizing more profitable businesses. The BOCs have adamantly refused their competitors access to the bottleneck elements essential to deploying the technology. Because they controlled the local loop and the serving wire centers, the BOCs engaged in a strategy of delay in order to prevent the establishment of competition and buy time until they had developed and begun marketing the products themselves. The BOCs have had the power to destroy any advantages that the provider that was first to the market could enjoy. Now that the BOCs apparently have been forced by the entry of competitors to make the technology to provide

advanced telecommunications services available, they have stepped up their campaign to eliminate any elements of competition. Rather than acknowledging that they have successfully postponed competition until they were ready to go head-to-head with their competitors, they seek special arrangements to bolster their efforts to maintain their competitive advantage for the foreseeable future. The Commission ought to rebuke this egregiously anticompetitive behavior. As even the Petitioning BOCs' supporters recognize, competitive local exchange carriers must have nondiscriminatory access to unbundled local loops conditioned to provide xDSL transmission services. See Comments of Sun Microsystems, Inc. at 5. Not only is such access essential as a matter of sound policy, it is required under the 1996 Act and the Local Competition Order.

III. The Remedy Proposed by the Petitioning RBOCs is Not the Solution to the So-called "Problem"

The Petitioning BOCs and BellSouth allege that congestion on the Internet backbone is the root cause of slow transmission speeds across the Internet. As a remedy to this so-called problem, the Petitioning BOCs claim that they alone have the resources and initiative to add sorely needed capacity to the Internet and to deploy broadband transmission services in the local loop. See, e.g., Bell Atlantic Petition at 15-16. What prevents them from utilizing these resources and initiative, in their opinion, is the fact that they are hobbled by pesky regulatory requirements that force them to share their technologies (through unbundling) and services (through resale) with their competitors. See, e.g., US WEST Petition at 48. These requirements, they argue, serve as a disincentive to the deployment of advanced telecommunications services. The Petitioners argue that freedom from the statutory requirements of unbundling and resale will accelerate BOC provision of broadband services

in the local exchange, and freedom from restrictions on providing in-region interLATA data services will unleash the mighty forces of the BOCs to alleviate the nagging slow-downs on the Internet that current providers are incapable of resolving.

To justify their effort to expand their monopoly into a developing market, the Petitioning BOCs and Supporting BOCs have served up a canard to the Commission and the public, seizing a moment in time when demand for Internet services is explosive to argue that their power is needed. This canard is merely an attempt to divert attention away from the woeful level of compliance with statutory requirements in making the local exchange accessible to competitive providers by casting blame on market participants who are responding as quickly to market demand as market conditions will permit. There is little doubt that the local exchange remains the slowest link in the Internet transmission chain, and that local link is controlled almost exclusively by the incumbent carriers. If there is sluggishness in the Internet, the ILECs are chiefly accountable for it. The Commission should not be misled by the BOC ruse, cast forth in an attempt to advance a BOC agenda of Section 271 relief while jettisoning Section 251 requirements. The remedy proposed by the Petitioning BOCs and the Supporting BOCs is simply not necessary. Level 3, along with other facilities-based providers such as Qwest, IXC Communications, and Williams, are well on the way to deploying additional Internet capacity, and existing providers such as AT&T and WorldCom are expanding their own Internet backbones to meet the demand. The participation of the BOCs is simply not needed and clearly is not appropriate. New entrants and capital markets are responding adequately. No need has been demonstrated that would justify the proposed gutting of the competitive framework of the 1996 Act. In order to

improve transmission quality over the Internet, Level 3 encourages the Commission to take those steps, particularly the step described below, to open the local exchange to those competitive forces that will deploy the advanced telecommunications services that the BOCs have until now successfully prevented their competitors from providing.

IV. Divestiture of the Local Loops and the Serving Wire Centers Will Provide Enormous Benefits Beyond the Rapid Deployment of Broadband Services.

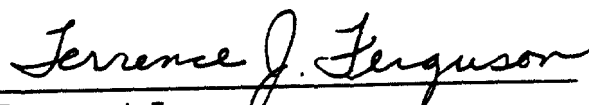
As Level 3 demonstrated in its initial Comments, the Commission should take the opportunity presented by the Bell Atlantic, US WEST, and Ameritech petitions to consider *alternative regulatory regimes that will achieve the goals of encouraging the deployment of broadband transmission and other advanced telecommunications services.* Divestiture of the local exchange facilities that are critically necessary for the deployment of such services would significantly enhance the ability of all local exchange carriers to compete fairly in this emerging market segment. Once the ILECs and the CLECs are placed on the same level of having to obtain access to the same bottleneck facilities, one incentive to engage in anticompetitive conduct will be removed, and competition will be permitted to flourish. Level 3 acknowledges that one consequence of such divestiture will be that the BOCs should have no difficulty satisfying the Section 271 criteria in order to provide in-region interLATA services for both data transmission and voice telephony. The benefits to be gained from opening access to the local loop are worth the risks of permitting the BOCs into the interexchange markets on this alternative, but accelerated, basis.

V. Conclusion

For the foregoing reasons, the Petitions of Ameritech, US WEST, and Bell Atlantic must be denied. Once the local exchange is truly opened to competition (by demanding strict

compliance with the 1996 Act by the ILECs), there will be no shortage of telecommunications providers seeking to provide advanced telecommunications services to the public. Taking the short-sighted position of allowing the Petitioning BOCs to be exempted from compliance with Sections 251 and 271 in order to accelerate deployment of advanced telecommunications services will eliminate incentives to comply with the pro-competitive elements of the 1996 Act and will reward the BOCs for their strategy of recalcitrance and anticompetitive control of bottleneck facilities.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terrence J. Ferguson". The signature is written in dark ink and is positioned above a horizontal line.

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May 6, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May 1998, copies of Reply Comments of Level 3 Communications, Inc. were served on the attached list by first class mail, postage prepaid.

Terrence J. Ferguson
Terrence J. Ferguson